

REMARKS

Reconsideration and reexamination of this application are respectfully requested.

A. Status of the Claims

Claims 27, 28, and 33-49 are pending. Of those, claim 27 is amended herein. In making the amendment applicant does not acquiesce in the rejections in the prior Office Action but rather is amending the claims to expedite prosecution. Applicant reserves the right to pursue the canceled subject matter in continuation applications.

Support for the amendment to claim 27 is found throughout the application as filed, such as at page 6, lines 1-7.

Claims 28, 34, and 37-41 have been withdrawn from consideration as allegedly drawn to a non-elected invention. Applicant respectfully requests that those claims be rejoined to generic claim 27 upon a determination that generic claim 27 is allowable.

Applicant acknowledges with appreciation that the Examiner has withdrawn the previous enablement rejection.

B. Anticipation Rejection

Claims 27, 33, 35-36, and 42-29 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by Joshi et al., U.S. Patent No. 6,277,882 ("Joshi"). Action at pages 2-3. Specifically, the Examiner contends that "latent insufficiency" is listed as one of the examples of cardiac insufficiency at page 6 of the specification, and the term "latent" would indicate that the condition does not have to be present. The Examiner then concludes that "any person being treated with the claimed composition would treat a 'latent' insufficiency and is within the scope of the claims."

Applicant respectfully disagrees. However, Applicant has amended claim 27 to recite "administering to a patient in need thereof" and to specify that "the cardiac insufficiency is selected from acute, energetic, energetic-dynamic, hypodynamic, excitomotor, hypoxemic, primary, compensated, decompensated, relative or stress insufficiency, and left ventricular insufficiency." Joshi does not teach treatment of

patients in need of treatment for the recited types of cardiac insufficiency. Accordingly, Joshi does not disclose all elements of the pending claims and the claims are novel over Joshi.

C. Obviousness Rejection

Claims 27, 33, 35, 36, and 42-49 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over Joshi in view of McDonald et al., *British Journal of Dermatology*, Vol. 99, pp. 469-75 (1978) ("McDonald"). Action at pages 3-4. Specifically, the Examiner contends that "Applicant's argument seems to go against their own specification at page 6, line 1", which discloses that "the cardiac insufficiency concerned may be any type of cardiac insufficiency regardless of its form and/or etiology". The Examiner further argues that the "etiology" would include those of psoriasis side effects as suggested by McDonald. The Examiner then concludes that "treating a person with the psoriasis treatment of Joshi would treat those cardiac insufficiencies, i.e. psoriasis side effects, as disclosed by McDonald and therefore encompass the instant claims." Applicant respectfully traverses for at least the reasons of record, and as well as the following reasons.

As described above, claim 27 has been amended to recite treatment of patients in need of treatment for specific cardiac insufficiencies. Nothing in McDonald or Joshi, alone or together, discloses or even suggests selecting such patients and treating them with the recited compositions. Accordingly, the claims are nonobvious over the cited references and the rejection should be withdrawn.

D. Conclusion


In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 18, 2009

By: 

Lauren L. Stevens
Reg. No. 36,691, for:

Scott M. K. Lee
Reg. No. 59,574
Tel. 202-408-6073